

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1542 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

DAYARAM B SOLANKI

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Appearance:

MR UM TRIVEDI ASSTT. GOVERNMENT PLEADER  
for Petitioners  
MR KR DIXIT for Respondent No. 1

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CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 17/03/97

ORAL JUDGEMENT

Being aggrieved by the judgment and decree dt. 20th June, 1980 passed by the then learned Judge, City Civil Court, Ahmedabad in Civil Suit No. 929 of 1977 partly decreeing the suit and directing the appellants to pay Rs.9,716-20 Ps., the original defendants have preferred this appeal.

2. The facts leading the appellants to prefer this

appeal may in brief be stated. The respondent was appointed as a Junior Clerk by the Director of Health and Medical Services. He joined the services on 1st May, 1961. By passage of time, he was found fit for being promoted as a Senior Clerk. He came to be promoted from 1st April, 1970. He belongs to scheduled castes and is entitled to the benefit under Roster system. He was entitled to a seniority by a particular rank in the seniority list and was also eligible to become the Head Clerk or Senior Assistant or Accountant in the month of February 1976, but he was not considered for any of the posts. In spite of that the Director of Health Services (Medical), by his order dt. 2nd February, 1976 appointed eight persons as the Head Clerks and so he made representation on 13th May, 1976 to the effect that he ought to have been considered for being promoted for any of the posts as per roster system. Thereafter he was promoted as Head Clerk issuing order dt. 24th June, 1976, and therefore, transferred to Government Hospital at Nadiad. Accepting his representation, he was posted as the Head Clerk at Ahmedabad. Thereafter the directorate was bifurcated into two divisions and his services were placed under the appellant no.2 and was posted as the Head Clerk in the office of the Dean of B.J. Medical College (Civil Hospital Compound), Ahmedabad in the grade of Rs.425 - 700 and since then he is serving as such. The Desai Pay Commission recommended same Pay Scale of Rs.425 - 700 qua three posts namely Head Clerk, Accountant and Senior Assistant. However the appellant no.1 did not consider the category of the Head Clerk equivalent to the category of Accountant and Senior Assistant. He considered the post of Head Clerk higher to the post of Accountant and Senior Assistant. Thereafter the appellant no.2 issued the Office Order dt. 11th January, 1977 transferring the respondent from the post of the Head Clerk to the post of Accountant in B.J. Medical College, Ahmedabad vice Mr. Jethi who was transferred and posted as the Head Clerk. The respondent thought that by such order of transfer, he was reverted to the post of Accountant which was lower to the post of the Head Clerk, and thereby the Department had inflicted punishment. Before issuing such order amounting to punishment, he was not heard. His representation was not accepted. He found that if he would be reverted and transferred as per the order, his valuable right of being promoted to the post of Superintendent would be jeopardised and would be put to a heavy loss. He also believed that the order of transfer dt. 11/1/1977 issued by the appellant no.2 was illegal and against the principles of natural justice, equity and good conscious. No one had a right to revert him from the post of the

Head Clerk to that of the Accountant without affording opportunity of being heard. The respondent then instituted a civil suit being Regular Civil Suit No. 114 of 1977 and obtained injunction against the order of transfer. While instituting such suit, a notice under Sec.80 of Civil Procedure Code was not given. Thereafter the respondent issued notice under Sec.80 of the Civil Procedure Code on 21/1/1977 and withdrew that suit with a liberty to file a fresh suit on the same cause of action. The permission was granted by the court, and therefore, another suit on the same day was instituted being Civil Suit No. 929 of 1977, wherein the appellant sought declaration to the effect that the order dt. 11/1/1977 transferring and posting him as Accountant was illegal and against the principles of natural justice, equity and good conscious, and also for a permanent injunction restraining the appellant from degrading or transferring him from the post of the Head Clerk, B.J. Medical College, Ahmedabad vice Mr. Jethi transferred and posted as the Head Clerk. Presenting the plaint, the respondent also preferred ad-interim injunction application, wherein an interim injunction was granted on 5th May, 1977 and on 7th May, 1977, ad-interim injunction granted was ordered to be continued till the final hearing of that ad-interim injunction application. Thereafter on 26th July, 1977, a Pursis at Ex.21 was filed by the appellant and pursuant to that Pursis, an ad-interim injunction granted was made absolute, alongwith the order to expedite the hearing of the suit. Thereafter the suit was heard undergoing necessary procedural formalities and it was partly allowed. The learned Judge below held that transferring the respondent from the post of Head Clerk to the post of Accountant was not the degradation as both the posts were of the same cadre with same benefits. He, therefore, refused to pass the decree as prayed for qua so called degradation; but he partly allowed the suit and ordered the appellants to pay Rs.9,716-20 Ps. towards the salary, allowance and other benefits relating to a period from 5th May, 1977 to 24th April, 1978 holding that the appellants had no right to withhold salary and allowance of that period to which the respondent was entitled to. In short except the relief about salary and allowances, rests of the reliefs came to be refused. Being aggrieved by such judgment and decree, the original defendants have filed the appeal challenging the same. It may be mentioned that appellant has filed neither cross-objections nor appeal against the decree refusing to grant rest of the reliefs. It should, however be stated that the lower court is perfectly right in refusing rest of the reliefs.

3. In this appeal before me, a short question whether respondent is entitled to the salary for a period from 5/5/1977 to 24/4/1978, arises for my determination, and therefore, I will confine to the same. So far as that point is concerned, it is the case of the appellant that after he instituted the suit on 28-3-1977, he on 5/5/1977 obtained ad-interim injunction against the appellants' order dt. 11-1-1977, whereby he was transferred from the post of the Head Clerk to the post of the Accountant. In spite of the ad-interim injunction granted, restraining the appellant from transferring and reverting him to the post of the Accountant, he was not permitted to resume his duties of the Head Clerk, the post he was holding & protected by the Court's order, though sincerely he tried and Mr. Jethi who was posted vice him was permitted to take the charge. As he was prevented from resuming duties, despite the ad-interim injunction, he filed an application for taking necessary action for the Contempt of Court against the appellants. During pendency of that application, the appellant prayed for mercy and so they were let off. Before the court, the appellants assured that they would be permitting the respondent to resume duty as the Head Clerk. Accordingly from 25th April, 1978, the respondent was permitted to resume his duties as a Head Clerk; but for a period from 5th May, 1977 to 24th April, 1978, the appellants refused to pay salary and other allowances attached to the post saying that the respondent had not worked on that post during that period, and therefore, he was entitled to no amount of salary or other allowances on the principle "no work no pay". The respondent fought-out tooth & nail. The learned Judge accepting his case partly, ordered the appellants to pay the amounts of salary and other allowances relating to that period to the respondent which is under challenge.

4. Mr. Trivedi, learned Asstt. Govt. Pleader appearing on behalf of the appellants has with his usual candour fairly conceded that ad-interim injunction as prayed for was granted, the respondent had not rendered the services during period from 5/5/1977 to 24/4/1978 and he was not paid salary and allowance because he had rendered no services.

5. Now question that arises for consideration is whether the respondent can claim the salary for the period during which he did not render the services. Ordinary, if the employee does not render the services, he is not entitled to claim salary on the principle "no work no pay", but that would come into play provided the employee flouting rules, or capriciously, or voluntarily,

or deliberately, or without any permission or getting leave sanctioned abstains from attending duty, but if he is prevented from resuming the duties, though he is sincerely desires and attempts to resume the duty, or made helpless from resuming the duties, it will be unjust, if he is deprived of the benefits of the service he is entitled to.

6. In the case on hand, as per the order below ad-interim injunction application Ex.2, the appellants were restrained from reverting or transferring him from the post of Head Clerk to the post of Accountant pursuant to the transfer order dt. 11/1/1977. That relief came to be granted on 5th May 1977 and it was effective upto 7th May 1977. On 7th May 1977, ad-interim relief granted was ordered to be continued till the final hearing of the application and accordingly order was served vide Ex.10. Thereafter during the course of the hearing, it seems that the appellants filed a Pursis Ex.21 urging the court to make the rule absolute as the court was inclined to hear and dispose the suit of at the earliest. Accordingly the relief was made absolute. What appears from the relief granted and made absolute is that the appellants were restrained from implementing the order of transfer & posting issued on 11-1-1977. Of course, the relief prayed for and accordingly the order thereon issued are not happily worded, but when the relief clause as a whole is read with care, it becomes crystal clear that implementation of the order dt. 11/1/1977 was sought to be stayed and that was stayed by the court issuing interim injunction. When the order came to be passed and made absolute, the respondent had not left the charge and he was very much enjoying post of Head Clerk. In view of the order, therefore, the appellants were under obligation to esteem the order, continue the respondent on the post of the Head Clerk and permit him to render services, but it seems the appellants did not esteem the order. With the result, the application for taking action for contempt of court's order was filed. During the pendency of that application, the appellants as stated above agreed to permit the respondent to resume the duty and render services as a Head Clerk. The respondent thereafter on 25th April, 1978 when permitted, resumed the duties and started to render the services. From such fact, it is evident that the respondent was prevented from resuming duty and rendering the service as Head Clerk and was made helpless. It's not that he voluntarily or deliberately, or capriciously, or running counter to the rules the respondent abstained from resuming duties and rendering the services as the Head Clerk. In short when the appellants prevented him from

resuming duty and performing the services as Head Clerk, it is not open to the appellants to contend that the respondent was not entitled to salary and allowance during that period or to withhold the same on the principle of " no work no pay ".

7. It is however submitted on behalf of the appellants that withdrawal of the salary and allowances on their part was justified because during the pendency of the suit, the respondent was intimated and instructed to take charge of the post of Accountant which is equivalent to the post of Head Clerk, but for one or another reason, the respondent paid no heed and continued to eschew the resumption of duties of the post on which posted. The contention cannot be accepted for the simple reason that the court had, while passing the order on the ad-interim injunction application, directed the appellants not to implement the order dt. 11/1/1977 of transfer & posting, but by resorting to different devices, the appellants were trying to subjugate the order already passed by the court, and prevent the respondent from joining the duties as the Head Clerk which is contrary to the rule of law. Every one is in law bound to esteem the order of the court in letter & spirit even if that order may not be palatable. He cannot twist it, act contrary to the order, and setting it at naught, under any guise, claim benefit or alleviate ones own wrong/lapse & cause injury to the antagonist. To put it differently, no one can avoid his obligation under the law or courts' order on any ground and when trapped, shed crocodile tears to screen one's own liability that arises in law. The instruction to join the duties as Accountant is certainly crafty and being contrary to the order of the court, amounts to preventing the respondents from resuming & discharging the duties as the Head Clerk, and avoiding one's obligation. It is, therefore, not open to the appellants to contend that they are not liable to pay when they instructed the respondent to take over an Accountant, but the respondent did not do so.

8. No other submissions were made. For the reasons stated hereinabove, learned Judge was perfectly right in granting the relief by partly allowing the suit. In the result, the appeal being devoid of any merits, is hereby dismissed with costs.

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